IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH D. FORTE and EDNA M. CALLAGHAN	:	CIVIL ACTION
v.	:	
WAREHOUSE EMPLOYEES UNION LOCAL 169, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND NOVARTIS CONSUMER HEALTH, INC.	:	NO. 97-6498

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 1998

Plaintiffs were employed at the Fort Washington plant of the defendant Novartis Consumer Health, Inc. They were covered by a collective bargaining agreement negotiated in 1992 by their collective bargaining representatives, the defendant Warehouse Employees Local 169. In 1995, they were laid off. Under the terms of the collective bargaining agreement, they were offered the choice of either accepting severance benefits at that time, or remaining eligible for recall for the next three years; plaintiffs chose to retain their recall rights.

While plaintiffs were on layoff status, two significant changes in circumstances occurred: (1) the company determined that the Fort Washington plant would be closed in early 1997, and (2) because of that prospect, the union and the company negotiated a new collective bargaining agreement, to replace the 1992 contract, which expired in October 1996. Under the terms of

the new agreement, which became effective retroactively as of October 15, 1996, persons laid off from the Fort Washington plant in the future would be entitled to significantly enhanced severance benefits. But the new agreement expressly provided that only those employees "actively employed" at the Fort Washington plant on October 15, 1996 would be entitled to the improved severance package.

In connection with the shut-down of the Fort Washington plant, the company developed a short-term need for additional employees and, pursuant to the 1992 collective bargaining agreement, plaintiffs were recalled. The company referred to this action as "re-hire." Each of the plaintiffs was informed, in writing, that the term of employment would be for a stated duration, and each was required to acknowledge, in writing, that, upon termination of employment, only the severance package provided by the 1992 agreement would be payable.

Plaintiffs have brought this action under Section 301 of the LMRA on the theory that the company breached the collective bargaining agreement by not paying the enhanced benefits when plaintiffs were again laid off as of August 1, 1997; and that the defendant union breached its duty of fair representation when it declined to support plaintiffs' grievances to that effect. The company has now moved for summary judgment, and plaintiffs have filed a cross-motion for summary judgment.

Plaintiffs' argument that the 1996 agreement entitles them to the enhanced benefits package is, in my view, simply wrong. Persons on layoff status are simply not "actively employed" unless and until they are recalled. There can be no doubt whatever that the enhanced severance package negotiated in light of the forthcoming plant closing was intended to apply only to persons on the active payroll at the Fort Washington plant as of October 15, 1996.

When plaintiffs elected to preserve their recall rights rather than accept a severance package in 1995, they had a right to expect that, if recalled, their employment would be in accordance with the terms of the collective bargaining agreement then in effect. The collective bargaining agreement which was in effect when they were in fact recalled entitled them to the same severance package they could have received in 1995, but not the enhanced severance package they now seek. In my view, the inescapable conclusion is that, as between plaintiffs and the company, the company did not breach either collective bargaining agreement by withholding the enhancement of severance benefits. Possible issues between plaintiffs and the defendant union (was it permissible for the union to fail to insist that recalled employees would be treated exactly the same as other employees?) are not before me at this time. The company is only required to comply with the contract which was negotiated, not with a

contract which perhaps should have been negotiated.

Plaintiffs also assert an ERISA claim, predicated on the company's having provided inaccurate information concerning their benefits. But, as discussed above, I conclude that the information furnished was correct. The ERISA claim will therefore also be dismissed.

For the foregoing reasons, defendants' motion for summary judgment will be granted, and plaintiffs' motion for summary judgment will be denied.

An Order follows.

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ORDER

AND NOW, this day of April, 1998, IT IS ORDERED:

(1) The Motion for Summary Judgment filed by the defendant Novartis Consumer Health, Inc. is GRANTED. Judgment is entered in favor of the defendant Novartis Consumer Health, Inc. and against the plaintiffs.

(2) Plaintiffs' Motion for Summary Judgment is DENIED.

John P. Fullam, Sr. J.